Supreme Court, U. S.
FILED
SEP 19 1980
MICHAEL RODAK, JR., CLERK

NO. 80 250

IN THE SUPREME COURT OF THE UNITED STATES

October Term 1980

VIRGINIA CRAMER, Petitioner-Defendant in Wrongful Foreclosure Action,

(PLAINTIFF) PETITIONER

VS

METROPOLITAN FEDERAL SAVINGS AND LOAN ASSOCIATION, a/k/a METROPOLITAN SAVINGS ASSOC., JAMES I. McCLINTOCK, ROGER C. RICHARDS and JOHN C. DENYER, Jointly, Severally and Individually, PLAINTIFFS in Wrongful Foreclosure Action;

McCLINTOCK DONOVAN CARSON & ROACH and JAMES I. McCLINTOCK, MICHAEL DOELLE and WILLIAM P. THORPE, Attorneys at Law, Jointly, severally and individually;

ABEL SELBURN, ALLEN COUNARD and WILLIAM R. McFADDEN, Attorneys at Law, Jointly, severally and individually,

FEDERAL HOME LOAN BANK BOARD, Director and/or Official and/or Officer in Charge,

MICHIGAN SUPREME COURT MEMBERS, Justices Mary S. Coleman, Thomas Giles Kavanagh, Charles L. Levin, John W. Fitzgerald, James L. Ryan, Blair Moody, Jr., and G. Mennen Williams, Jointly, severally and individually,

RESPONDENTS

PETITIONER'S REPLY TO RESPONDENTS' (2) MEMORANDUMS OPPOSING CERTIORARI

Virginia Cramer, pro se Petitioner
27314 Clairview, Dearborn Hts., Mich. 48127
Telephone: (313) 278-7286

NO. 80 250

IN THE SUPREME COURT OF THE UNITED STATES

October Term 1980

VIRGINIA CRAMER, Petitioner-Defendant in Wrongful Foreclosure Action,

(PLAINTIFF) PETITIONER

VS

METROPOLITAN FEDERAL SAVINGS AND LOAN ASSOCIATION, a/k/a METROPOLITAN SAVINGS ASSOC., JAMES I. McCLINTOCK, ROGER C. RICHARDS and JOHN C. DENYER, Jointly, Severally and Individually, PLAINTIFFS in Wrongful Foreclosure Action;

McCLINTOCK DONOVAN CARSON & ROACH and JAMES I. McCLINTOCK, MICHAEL DOELLE and WILLIAM P. THORPE, Attorneys at Law, Jointly, severally and individually;

ABEL SELBURN, ALLEN COUNARD and WILLIAM R. McFADDEN, Attorneys at Law, Jointly, severally and individually;

FEDERAL HOME LOAN BANK BOARD, Director and/or Official and/or Officer in Charge;

MICHIGAN SUPREME COURT MEMBERS, Justices Mary S. Coleman, Thomas Giles Kavanagh, Charles L. Levin, John W. Fitzgerald, James L. Ryan, Blair Moody, Jr., and G. Mennen Williams, Jointly, severally and individually,

RESPONDENTS

PETITIONER'S REPLY TO RESPONDENTS' (2) MEMORANDUMS OPPOSING CERTIORARI

TABLE OF CONTENTS

page

PART I Reply to Respondent-Allen Counard's Memorandum 2

PART II Reply to Respondents-Metropolitan Federal Savings and Loan, et al, and Respondents McClintock Donovan Carson & Roach et al 11

Index i and ii

INDEX

Constitutional Provisions

U S Const., Article III Sec 2 19

U S Const., Fifth Amendment 19

U S Const., Fourteenth Amendmt. 19

Texts

58 CJS, Monopolies, at 87 19

Regulations

12 CFR 545.601 (4) (iii) 19

Cases

Cooper Stevedoring Co., Inc. v Fritz Kopke, Inc., Tex. 1974, 94 S. Ct. 2174, 2176, note 4, 417 US 106, 109, 40 L Ed 2d 694, 699. 9

PETITIONER'S REPLY TO RESPONDENTS' (2) MEMORANDUMS OPPOSING CERTIORARI

Petitioner's reply herewith is in two (2) parts. Only two (2) Memorandums from the opposition were received by Petitioner.

PART I — Reply to Respondent-Allen Counard's Memorandum

PART II — Reply to Respondents-Metropolitan Federal Savings and Loan, et al, and Respondents McClintock Donovan Carson and Roach, et al

---

PART I

PETITIONER'S REPLY TO RESPONDENT-ALLEN COUNARD'S MEMORANDUM

This action is more than legal malpractice against Respondent Allen Counard. (42 USC 1983, 1985, et seq.) Petitioner charges fraud, concealment and deceit together with conspiratorial misconduct (cover-up by and between attorneys on both sides) by a class-based group engaging themselves in invidiously discriminatory practices against a mortgagor-litigent/client as title-holder of

real property. (See Petitioner's Appendix, Volume I, at pages 48a; 58a through 78a)

Further, this action charges certain attorneys with obstructing justice where fraud had been perpetrated upon the Michigan State courts as to a foreclosure on Petitioner's property where there was no "default" on the part of Petitioner-mortgagor at the time of the Foreclosure by Advertisement.

Attorney-Allen Counard (Respondent) is the second attorney whom "Cramer" was forced to hire in the wrongful foreclosure case. Insofar as Respondent Counard is concerned by Petitioner's action, the said parties were always aligned in the courts below as:

Virginia Cramer, Plaintiff
VS
Allen Counard, Defendant, et al

The complaint filed by Petitioner-Cramer in the United States District Court is non-identical with the State case. (58a through 78a) Defendant-attorney-Allen Counard never answered

to the said Complaint filed in the U. S. District Court. The charges are uncontroverted by Respondent Counard.

Further, Respondent-Defendant-Counard did not move for "joining and consolidation" of the Federal case with the State court action. (203a through 222a) No motion for joining and consolidation was filed by said Respondent-Defendant-Counard.

As to the Order remanding in part as to Defendant-Counard only, entered in the U. S. District Court on January 17, 1980, the Court remanded to the wrong jurisdiction where the Wayne County Circuit Court was without jurisdiction while the matter was pending in the Michigan Supreme Court until April 3, 1980, as shown in the lower court records.

Following Petitioner's filing of Notice of Appeal in the United States Court of Appeals, Sixth Circuit, Respondent-Defendant-Counard filed an improper Motion to Dismiss Appeal (463a, 464a) erroneously claiming "joinder"

of the federal action with the state action. Respondent-Defendant-Counard did not file a cross-appeal, and in the failure to cross-appeal the court was without jurisdiction on such contention as to "joinder" of the federal case on "remand" of the State case. The "Order of Remand In Part" as to Defendant-Counard only, made no inference of any remand of the federal action, and certainly made no inference as to any "joinder" of petitioner's actions (465a through 489a).

Diversity of citizenship is not necessary and not a prerequisite under sections 1983, 1985 of Title 42 relating to charges of conspiracy and deprivation of constitutional rights under color of state law. Petitioner-Cramer was forced to hire lawyers. Said lawyers are a part of that class-based group who engaged themselves in invidiously discriminatory practices in misrepresentation, fraud, concealment and deceit against your herein Petitioner-Cramer (their own client)

where she was denied the equal protection of the law by the very simple effect of hiring lawyers.

Petitioner-Cramer has never had a day in court to prove that there was no basis for the foreclosure initiated by mortgagee-Metropolitan Federal Savings and Loan, et al. (See Petitioner's Complaint for Declaratory Judgment, Preamble and Counts Six, Seven and Eight (among others) pertaining to the said attorneys (on both sides) in this case. (Petitioner's Appendix, 21a through 90a)

Further, Petitioner claims "state action" is involved in deprivation of her constitutional right to proceed without counsel, where the State courts forced Petitioner to hire lawyers (among whom, attorney-Counard) who is a co-conspirator in obstructing justice and in violation of Petitioner's civil rights, among which the right to be heard and the right to pay her own taxes, insurances and other assessments on real property with

her own money. In a nutshell, the lawyers prevented a due process hearing, by their misrepresentations, fraud, concealment and deceit, for exploitation purposes.

DIVERSITY OF CITIZENSHIP NOT NECESSARY AND NOT A PREREQUISITE UNDER 1983, 1985 ET SEQ. OF TITLE 42

The federal question is most substantial as important issues arising under the Fifth and Fourteenth Amendments to the United States Constitution.

Respondent-attorney-Counard had in his possession numerous evidentiary items which he could have utilized, but did not, which would have shown that Petitioner-mortgagor-Cramer was not in default of her mortgage and she was not in default in payment of "escrow" at the time of the premature, precipitous and malicious foreclosure action taken by mortgagee-Metropolitan Federal Savings and Loan, et al.

Respondent-attorney Counard was to have managed the case for a period of approximately two (2) years, from about April or May 1970

to about March 1972. During this period of about two (2) years, Respondent-attorney-Counard managed primarily to cover-up for the fraudulent-abandonment of the case by the previous attorney (Abel Selburn) whom your Petitioner-Cramer was forced to hire by the Court's insistence to "hire a lawyer."

The evidence(s) in Respondent-attorney-Counard's possession, for the period of two (2) years, and subsequently, was fraudulently concealed in conspiratorial misconduct, in misrepresentation to the court, and in obstructing justice, together with the fraud, concealment and deceit of attorneys for mortgagee-Metropolitan Federal Savings and Loan, et al. Diversity of citizenship is not necessary and not a prerequisite in cases brought under sections 1983, 1985, et seq. of Title 42. The conspiratorial purpose by and between the attorneys was precisely to deny "Cramer" the equal protection of the law, and to <u>prevent</u> a due process hearing.

DEFENDANT-ATTORNEY-COUNARD (Respondent) IS PRECLUDED FROM RE-RAISING ISSUES AND/OR CONTENTIONS DISMISSED BY UNITED STATES COURT OF APPEALS FOR LACK OF JURISDICTION ON FAILURE TO FILE CROSS-APPEAL, AND NOW LIKEWISE PRECLUDED BY FAILURE TO FILE CROSS-PETITION FOR CERTIORARI

Defendant-attorney-Counard's motion to dismiss appeal filed in the United States Court of Appeals raised the contention that the federal case was "remanded" for joinder with the State case. There was no cross-appeal filed and the said court was without jurisdiction for failure to cross-appeal. Likewise, this United States Supreme Court should not consider such contention. The contention of "joining and consolidation" of the federal case with the State case on "remand" to the Wayne County Circuit Court should not be before this Court as an issue for review in the absence of a cross-petition for certiorari. See, Strunk v United States, Ill. 1973, 93 S Ct 2260, 412 US 434, 37 L Ed 2d 56; Cooper Stevedoring Co., Inc. v Fritz Kopke, Inc., Tex. 1974, 94 S Ct 2174, 2176, note 4, 417 US 106,

109, 40 L Ed 2d 694, 699, (among others) where the Court said that, because no cross-petition for certiorari had been filed, "we therefore lack jurisdiction to consider" a contention being urged.

Respondent-attorney-Counard does not dispute that the "Order" dated January 17, 1980, as a "remand in part" to the Wayne County Circuit Court remanded to the wrong jurisdiction. The State case was in the jurisdiction of the Michigan Supreme Court until April 3, 1980.

Petitioner herein is not a lawyer (which is obvious) and she certainly is no expert in the law, but it appears to her (after pondering extensively) that where the Sixth Circuit, Court of Appeals, said "the motion to dismiss is well taken" was because of the failure to file a cross-appeal. Likewise, this United States Supreme Court should not consider Respondent-Counard's contention for failure to file a cross-petition for certiorari.

Respondent-Counard's memorandum opposing certiorari, therefore, should be rejected by the Court.

PART II

PETITIONER'S REPLY TO RESPONDENTS-METROPOLITAN FEDERAL SAVINGS AND LOAN, et al, AND RESPONDENTS McCLINTOCK DONOVAN CARSON AND ROACH, et al, MEMORANDUM OPPOSING CERTIORARI

Petitioner filed a new, original proceedings Complaint in the Federal District Court (Detroit-Division) 21a through 90a, Petitioner's Appendix, Volume I.

Respondents Metropolitan Federal Savings and Loan, et al, and Respondents McClintock Donovan Carson and Roach, et al, did not answer to said Complaint and therefore, failed to plead or defend.

Respondents' only pleadings filed in connection with Petitioner's Complaint, in the Federal court jurisdiction below were as follows: (130a through 133a)

Objection to Petition for Removal of Cause to the United States District Court for the Eastern District of Michigan (Southern Division-Detroit) and Motion for Remand to State Court

Memorandum of Law in Support of Objection to Petition for Removal of Cause to the United States District Court for the Eastern District of Michigan (Southern Division-Detroit) and Motion for Remand to State Court

Exhibits A and B (134a through 164a) and

Motion to Dismiss (Complaint)
Brief in Support of Motion to Dismiss

(165a through 169a)

Petitioner opposed the said motion to dismiss and also motioned to strike sham and false pleadings (as to the herein Respondents), (170a through 195a) and opposed Respondents' motions to remand (195a through 202a).

Respondents' motion to remand was denied and is not appealable. (See Docket entries, January 17, 1980 DD 1/18/80, Petitioner's Appendix, Volume I, page 8a) "Deft Metro Savings Assoc's Motion to dismiss granted, Motion to remand denied;"

The Federal District Court made no specific disposition as to Respondents McClintock Donovan Carson & Roach, James I. McClintock, Michael Doelle and William P. Thorpe, and dismissed the action. Said Respondents did not answer to Petitioner's Complaint and said parties-defendants failed to plead or defend. See Count 7, Fraud, Concealment or Deception, Attorney Malpractice McClintock Donovan Carson & Roach, Michael Doelle and William P. Thorpe (66a through 75a).

Respondents do not dispute that they perpetrated a fraud upon the court.

Respondents do not dispute that the decision of the Michigan Supreme Court dated October 6, 1977, reported at 401 Mich 252 is based upon false facts.

Respondents do not dispute that they caused the entry of a fraudulent "Order" in the Wayne County Circuit Court on September 27, 1968. (317a, 318a)

Respondents do not dispute that they caused

a fraudulent Sheriff's Sale of Plaintiff's (Petitioner's) property on October 1, 1968. (325a)

Respondents do not dispute that Petitioner's monthly installment payments on the mortgage loan always included principal, interest and "escrow" amounts, and that Petitioner never failed to pay "escrow" prior to the foreclosure.

Respondents do not dispute the figures and accountings in Petitioner's pleadings and that their foreclosure action by publication on May 23, 1968, was by fraud, deception and/or attorney malpractice.

Respondents do not dispute that they refused to accept Petitioner's current payments "on account of the foreclosure."

Respondents do not dispute that the Sheriff's sale of Petitioner's property on October 1, 1968, was in violation of Michigan statutory provisions, and without notice; and that no "deficiency" is shown. (325a)

Respondents do not dispute that no testimony, no proofs, no exhibits, or no other admissible evidence was entered in the court records to support their claim or defense that "she refused to pay escrow". In fact, Respondents do not dispute any charges or allegations in Petitioner's complaint.

Your Petitioner has never had a day in court to prove that there was no basis for the foreclosure, and that said foreclosure was a perpetration of fraud.

RES JUDICATA MAY NOT BE SUSTAINED WHERE THE FORECLOSURE MATTER HAS NEVER BEEN HEARD BY A COURT OF COMPETENT JURISDICTION

The Respondents (Metropolitan Federal Savings and Loan, et al, and their attorneys, defendants herein) assert, in effect, that their fraudulent foreclosure is "res judicata."

The Michigan Supreme Court decision (even though based upon false facts and which the Respondents do not dispute that said decision is based upon false facts) as reported at

401 Mich 252, allows for antitrust defense and assertion of illegality of the mortgage dovenant as to "escrow" funds. See, Gutor International, AG v Raymond Packer Co., Inc., C.A. Mass 1974, 493 F 2d 938.

Further, the federal question of "state action" appears to be resolved by the Michigan Supreme Court decision, in sanctioning the foreclosure, where the State courts actually become a part of the tying-in arrangement as an unlawful combination in enforcing the restrictive covenant of a mortgage (as to "escrow" funds), granting the mortgagee a monopolization of collection of "escrow" moneys, when the mortgagee (Metropolitan) claims they are bound to do nothing with the "escrow" funds. The tying-in arrangement destroys or eliminates competition. (536a)

The "escrow" funds are the properties of the mortgagor (borrower). The mortgagor gets nothing while the mortgagee (lender) self-deals with the said "escrow" funds, in viola-

tion of the Fifth Amendment to the United States Constitution (deprivation of property without just compensation).

"State action" brants the monopolization of moneys (a part of commerce) where the taxes and insurance liabilities of the mortgagor may never get paid while said "escrow" funds are in the specific sole control of the mortgagee (banking and lending institutions). In Janich Bros., Inc. v American Distilling Co., C.A. Cal. 1977, 570 F 2d 848, the Federal court of appeals said, (393a through 410a)

> "To establish a prima facie case of attempted monopolization, a plaintiff must prove three elements:
>
> (1) specific intent to control * * * or destroy competition with respect to a part of commerce,

(commerce = money = for taxes)

> (2) Predatory conduct directed to accomplishing the unlawful purpose

(predatory conduct = leverage of foreclosure, or actual foreclosure on real property for "escrow" funds)

(3) a dangerous probability of success."

(dangerous probability = Mich. Supreme Court 401 Mich 252 and "state action"

> "The phrase 'attempt to monopolize' means the employment of methods, means, and practices which would, if successful, accomplish monopolization and which, though falling short, nevertheless approach so close as to create a dangerous probability of it. * * * In determining whether there was an attempt to monopolize, all of the acts of the defendants should be viewed together."
> Knutson v Daily Review, Inc., C.A. Cal 1976, 548 F2d 795, cert denied 97 S Ct 2977, 433 US 910, 53 L Ed 2d 1094.

Since the Respondents herein do not dispute that the so-called "judgment" dated September 27, 1968, (entered by Thomas J. Murphy, J.) as a finding of "default" in the mortgage, was obtained in the absence of a due process hearing and where no exhibits, no evidence, no proof was entered in the court-hearing record, defense of "res judicata" is not available to the herein Respondents.

> "Defense of res judicata would not be available in subsequent action as result of prior action between same parties where plaintiff's right had not been

> determined in prior action due to lack of opportunity to be heard and present evidence."
> Williams v Murdock, C.A. Pa. 1964, 330 F 2d 745.

(also see, 378a)

Further, see 58 CJS, Monopolies, at 87. "One may not invoke the aid of the courts to enforce provisions of a contract which is invalid as in restraint of trade (or commerce) or tending to create a monopoly." (379a)

(U. S. Const., Article III, sec 2, Judicial power; jurisdiction)

Further, Petitioner challenges the constitutionality of Title 12, Code of Federal Regulations, 545.6-1, et seq., as promulgated under the authority of the Federal Home Loan Bank Board, and more specifically, 12 CFR 545.6-1 (4) (iii) as appears in Point VII, pages 74, 75 and 76 of herein Petition for Certiorari. Petitioner contends that the said regulation bears no reasonable relationship to the power of Congress, and contravenes the Fifth and Fourteenth Amendments to the United States

Constitution where the so-called "escrow" funds are required as "deprivation of property without just compensation" to the mortgagor (5th Amend.), and required in the absence of due process and denial of equal protection of the law, where no taxes are assessed, billed, due, or unpaid (14th Amend.).

" * * * taxes are not valid debts unless lawfully imposed. * * * " Gully v First National Bank, (1936) 299 US 109.

Respondents set forth no basis for a position stated as "res judicata". The final judgment of the Michigan Supreme Court (401 Mich 252) rests upon a federal ground of "state action" involved (among other matters).

Respondents presented no jurisdictional objections to this Court in reviewing the case on certiorari.

* * * * * * * * * * * * * * * * *

Accordingly, for the foregoing reasons and for those reasons presented in Petitioner's petition for certiorari, it is respectfully submitted that certiorari should be granted.

Respectfully,

Virginia Cramer

Virginia Cramer,
Petitioner pro se
27314 Clairview
Dearborn Hts., Mich. 48127
(313) 278-7286

Dated:
September 10, 1980